



David B. Cohen  
Mayor

# CITY OF NEWTON, MASSACHUSETTS

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DATE: May 6, 2005

TO: Brian E. Yates, Chairman, and  
Members of the Zoning and Planning Committee

FROM: Michael Kruse, Director of Planning and Development  
Juris Alksnitis, Chief Zoning Code Official

SUBJECT: **Working Memo – for discussion**  
Petition # 354-04 of ALD. BAKER AND SANGIOLO proposing that the Zoning Ordinances be amended in order to address building mass, height, etc. involving multiple aspects and potential changes to Sec. 30-1 definitions (see entire text in memo).

CC: Board of Aldermen  
Mayor David B. Cohen  
Planning and Development Board  
Philip B. Herr, Chair, Comprehensive Planning Advisory Committee

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## I. BACKGROUND

The scale and density of residential development has been a concern to Newton residents and the Board of Aldermen over the years. While most Section 30-15, Table 1 dimensional and density controls have been in operation for some time, Floor Area Ratio (FAR) regulations were first incorporated into the Zoning Ordinance in 1997 with the adoption of Ordinance V-112, April 23, 1997 (*Board Order 457-96(2)*). A key purpose of FAR is to help regulate the density of development and building mass (bulk) on a lot by setting limits on gross floor area. Records indicate that when the Board of Aldermen adopted the FAR requirements in 1997, the original limits were initially higher, then subsequently adjusted downward to the FAR currently reflected in Table 1.

On March 1, 2004, the Board of Aldermen adopted Ordinance X-75, which tightened Section 30-15, Table 1, Footnote 7(4) so as to ensure the application of FAR to the expansion of dwellings or development of second units at residential buildings located in Multiple Residence zones. FAR now applies to the entire building regardless of whether or not the number of units increases.

Subsequently, Petition #242-04 was heard on June 14, 2004, then reheard on September 27, 2004 proposing to reduce the FAR from 0.4 to 0.35 for lots containing 10,000 sq. ft. or less. While initially held for additional study, this item was later voted "No Action Necessary."

During the summer of 2004, the subject docket item was placed on the agenda of the Zoning and Planning Committee (ZAP) for discussion. Concerns were expressed about on-going problems pertaining to the continued development of oversize residential structures and perceived “loopholes” in the Newton Zoning Ordinance. As a result docket item #354-04 was formulated in a broad manner to capture the various potential elements which might be involved in facilitating such development

More recently, docket item #137-05 was also placed on the ZAP agenda for discussion. Committee members focused on concerns raised as a result of very large additions being built without FAR controls as provided per the current Footnote 7(3) in Section 30-15, Table 1. For a preliminary discussion of this item see Planning and Development Department memorandum dated May 6, 2005.

## II. DOCKET ITEM #354-04

This petition has been framed as follows:

“Ald. Baker and Sangiolo proposing that the Zoning Ordinances be amended in order to address building mass and height, better reflect usable floor area in attic and basement spaces, clarify measurement of building height when the roof line is changed, address upper story additions involving dormers and finished attic areas, and address large additions significantly increasing building size and mass, through amending the following provisions including but not limited to Section 30-1 definitions pertaining to “attic”, “height”, “story, half”, “floor area, gross,” “space, habitable”, adding new definitions as appropriate pertaining to dormers and roof types, and amending Section 30-15, Table 1, Footnote 7(3) pertaining to calculation of FAR in the case of existing structures and such other related provisions as may apply.”

The Law Department has advised that in order to amend one or more of the above, it will be necessary to specifically describe such proposed change in a manner and form which will meet public notice requirements prior to advertisement for public hearing.

The main elements of this “omnibus” petition include the following:

- Building mass and height;
- Attic and basement spaces;
- Measurement of building height when roof line is changed;
- Upper story additions involving dormers;
- Upper story additions involving finished attic areas;
- Large additions significantly increasing building size and mass;
- Clarification and amendment of Section 30-1 definitions pertaining to: attic, height, half story, gross floor area, habitable space, dormers, and roof types; and
- Amending Section 30-15, Table 1, Footnote 7(3) – revising FAR exemption when demolishing 50% or less.

## III. KEY ISSUES RAISED AT PRIOR DELIBERATIONS

The following summarizes key issues raised as part of prior deliberations by the Board of Aldermen during the recent past:

- Need a workable mechanism to control over-development of small lots grand-fathered when the Zoning Ordinance was overhauled in 1953. This applies typically to large 2F as of right redevelopment on small lots in MR zones.
- Need to revise Section 30-15, Table 1, Footnote 7(3) to plug loophole exempting a property from FAR when 50% or less is demolished as this allows oversize dwellings.
- Need to revise the definition of *Floor area, gross*, which excludes attics, basements and half stories from FAR.
- Need to revise the definition of *Story, half* to clarify situations involving dormers.
- Need to provide a definition of dormers.
- Need to revise the definition of *Height* to clarify situations involving dormers where dormers comprise a significant portion of the roof.
- Need to revisit FAR allowed as of right.

#### IV. SUMMARY

The Planning Department believes that it makes sense to continue to refine Newton's dimensional and density controls in conjunction with refining and clarifying key definitions in order to develop more precise mechanisms for controlling building size and avoiding oversize dwellings inconsistent with neighborhood character.

When concerns are raised about oversize buildings, many of these concerns originate within Single Residence districts as well as within Multi Residence districts, and involve a range of lot sizes across the board. The Planning Department recommends revisiting FAR overall and considering appropriate reductions citywide, as well as reviewing and modifying provisions which directly or indirectly have the effect of loopholes facilitating oversize dwelling development that appears to be out of scale with the immediate neighborhood.

In particular, we suggest the Zoning and Planning Committee focus on eliminating the 50% demolition FAR exclusion, eliminating the ½ story FAR exclusion, and modifying the building height definition to clarify situations involving dormers.

#### Attachments

**Attachment A: *Selected Definitions per Section 30-1, Newton Zoning Ordinance***

## **Attachment A – Selected Definitions per Section 30-1 Newton Zoning Ordinance**

Attic: The space between the ceiling joists of the top full story and the roof rafters.

Basement: Any story in a building in which two-thirds (2/3rds) or more of the distance between the floor and the ceiling next above it is below the average grade plane adjacent to the building. However, in the case of one- and two-family residential uses, any story in a building in which one half (1/2) or more of the distance between the floor and the ceiling next above it is below the average grade plane adjacent to the building.

Building: A structure, including alterations, enlargements, and extensions thereto, built, erected, or framed of any combination of materials having a roof, whether portable or fixed, designed or intended for the shelter of persons, animals, or the storage of property.

Floor area ratio (residential): (a) For residential structures in residential districts, gross floor area of a building on the lot divided by total lot area.

Floor area, gross (residential): (a) For residential structures in residential districts, the sum of the floor area within the perimeter of the outside walls of the building without deduction for garage space, hallways, stairs, closets, thickness of walls, columns, atria, open wells and other vertical opens spaces, or other features exclusive of any portion of a basement as defined in this section. For atria, open wells and other vertical open spaces, floor area shall be calculated by multiplying the floor level area of such space by a factor equal to the average height in feet divided by ten (10). Excluded from the calculation are bays or bay windows which are cantilevered and do not have foundations and which occupy no more than ten (10) per cent of the wall area on which they are mounted and any space in an attic or half story as defined in this ordinance.

Height: The vertical distance between the elevations of the following: (a) the grade plane and (b) the midpoint between the highest point of the ridge of the roof and the line formed by the intersection of the wall plane and the roof plane.

Not included in such measurements are 1) cornices which do not extend more than five (5) feet above the roof line; 2) chimneys, vents, ventilators and enclosures for machinery of elevators which do not exceed fifteen (15) feet in height above the roof line; 3) enclosures for tanks which do not exceed twenty (20) feet in height above the roof line and do not exceed in aggregate area ten (10) per cent of the area of the roof; and 4) towers, spires, domes and ornamental features.

Story, half: A story directly under a sloping roof where the area with a ceiling height of 7'3" or greater is less than 2/3rds the area of the story next below.